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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/780,126	02/17/2004	David McKay	NOR1162-031	6466
45684	7590	03/05/2007		
ROGER A. GILCREST 250 WEST STREET COLUMBUS, OH 43216-7513			EXAMINER EDWARDS, LAURA ESTELLE	
			ART UNIT	PAPER NUMBER
			1734	
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		03/05/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/780,126

Applicant(s)

MCKAY, DAVID

Examiner

Laura Edwards

Art Unit

1734

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 7-11 and 16-19 is/are allowed.
- 6) ☒ Claim(s) 1-6 and 12-15 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 August 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date ____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- ☐ Notice of Informal Patent Application
- ☐ Other: ____.

Art Unit: 1734

Drawings

Acknowledgement is made of the formal drawings received on 8/16/04, however, Applicant must resubmit these drawings with the notation, --Replacement Sheet--, on the top of each sheet. Therefore, the drawings on 8/16/04 are unacceptable.

Specification

The disclosure is objected to because of the following informality: on page 11, the title, "Brief Description of the Drawings" is missing typed letters.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by Campbell (US 2,642,029).

Campbell provides an apparatus for grasping a frangible conical confection shell, said apparatus comprising the combination of a mounting plate (57) having first and second sides, said mounting plate having a plurality of apertures (not numbered) adapted to accept a frangible conical confection shell (see dotted cone) from said first side; a pair of opposed arms (64) associated with each said aperture and coupled to said second side of said mounting plate, the

Art Unit: 1734

opposed arms adapted to be moved between a closed gripping position engaging the confection shell; and an open position releasing the confection shell; and (c) an actuator (58) that moves the opposed arms between a closed gripping position whereby the arms engage the confection shell, and an open position releasing the confection shell (col. 4, lines 23-46).

With respect to claim 5, see cone holder (62).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 2-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Campbell (US 2,642,029).

The teachings of Campbell have been mentioned above but Campbell is silent concerning the cone holding member (62) being of flexible material adapted to be flexed between an open position and a closed position. However, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to make the cone holding member of a suitable

Art Unit: 1734

flexible material (i.e., resilient o-ring) in order to allow for the flexibility of the opposed arms to grip various sized cones.

With respect to the opposed arms including flattened surfaces, the tips or ends of the arms are bent and flattened to impale the cones as shown in Fig. 12.

With respect to the actuator, Campbell provides actuating bar (58) connected to plate bearing pairs (59, 60) to effect gripping and releasing of the cones.

Claims 6 and 12-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Campbell (US 2,642,029) in view of Dill et al (US 3,640,243).

The teachings of Campbell have been mentioned above but Campbell is silent concerning the use of a transport mechanism to move the mounting plate from an upright position to an inverted position. However, it was known in the art, at the time the invention was made, to provide an endless type conveyor to support gripped cones for transportation from an upright position to an inverted position for receiving coating (i.e., wet-dip coating or dry-spray/fluidization coating) as evidenced by Dill et al (col. 1, lines 44-46; see Figs. 2, 5-7). It would have been obvious to one of ordinary skill in the art to provide an endless type conveyor arrangement as taught by Dill et al in communication with the cone grasping apparatus of Campbell in order to enable automatic transporting/handling and further processing of the cone with a desired coating material.

With respect to claim 12, Campbell is silent concerning the use of a transport mechanism to move the mounting plate from an upright position to an inverted position to receive a coating application. However, it was known in the art, at the time the invention was made, to provide an

Art Unit: 1734

endless type conveyor to support gripped cones for transportation from an upright position to an inverted position for receiving coating (i.e., wet-dip coating or dry-spray/fluidization coating) as evidenced by Dill et al (col. 1, lines 44-46; see Figs. 2, 5-7). It would have been obvious to one of ordinary skill in the art to provide an endless type conveyor arrangement as taught by Dill et al in communication with the cone grasping apparatus of Campbell in order to enable automatic transporting/handling and further processing of the cone with a desired coating material, all without the need of an operator.

Allowable Subject Matter

Claims 7-11 and 16-19 would be allowable.

Claims 7-11 would be allowable because there is no teaching or suggestion in the prior art of an apparatus for grasping and retaining a frangible conical confection shell comprising the combination of a carrier plate having first and second sides, the carrier plate having a plurality of receiving apertures, each receiving aperture adapted to accept a frangible conical confection shell from the first side; a pair of support plates residing adjacent to the second side of the carrier plate and slidably coupled thereto, each of the support plates having a plurality of receiving apertures located to be aligned with the receiving apertures in the carrier plate and adapted to accept the frangible conical confection shell; a retaining pin associated with each receiving aperture and residing adjacent to a bottom side of each support plate, each retaining pin having a pair of opposed arms moveable between a closed position and an open position for grasping and releasing a confection shell, respectively; a guide post associated with each retaining pin, the guide posts for slidably coupling the support plates to the carrier plate and for securing each

Art Unit: 1734

retaining pin; an actuator pair associated with each retaining pin and attached to the bottom side of each support plate, the actuator pairs provided to move the opposed arms of the retaining pins between the closed position and the open position upon slidable displacement of the support plates; and an actuating means for causing slidable displacement of the support plates.

Claims 16-19 would be allowable because there is no teaching or suggestion in the prior art of an apparatus for grasping, inverting, and coating a portion of a frangible conical confection shell comprising the combination of a conical shell grasping an retaining apparatus, comprising a carrier plate having first and second sides, the carrier plate having a plurality of receiving apertures, each receiving aperture adapted to accept a frangible conical confection shell from the first side, a pair of support plates residing adjacent to the second side of the carrier plate and slidably coupled thereto, each of the support plates having a plurality of receiving apertures located to be aligned with the receiving apertures in the carrier plate and adapted to accept the frangible conical confection shell, a retaining pin associated with each receiving aperture and residing adjacent to a bottom side of each support plate, each retaining pin having a pair of opposed arms moveable between a closed position and an open position for grasping and releasing a confection shell, respectively, a guide post associated with each retaining pin, the guide posts for slidably coupling the support plates to the carrier plate and for securing each retaining pin, an actuator pair associated with each retaining pin and attached to the bottom side of each support plate, the actuator pairs provided to move the opposed arms of the retaining pins between the closed position and the open position upon slidable displacement of the support plates; and an actuating means for causing slidable displacement of the support plates; a transport mechanism adapted to move the conical shell grasping and retaining apparatus from a position

Art Unit: 1734

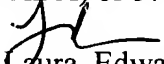
wherein the conical shell is held in an upright posture to a position wherein the conical shell is held in an inverted posture, and to convey the conical shell while held in the inverted posture; and a coating material application device disposed beneath the transport mechanism and arranged so as to contact a portion of the conical shell with the coating material while the conical shell is in the inverted posture.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura Edwards whose telephone number is (571) 272-1227. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Fiorilla can be reached on (571) 272-1187. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Laura Edwards
Primary Examiner
Art Unit 1734

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February 26, 2007